

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, July 21, 2004, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jon Carlson, Eugene Carroll, Gerry Krieser, Roger Larson, Dan Marvin, Melinda Pearson, Mary Bills-Strand and Tommy Taylor (Lynn Sunderman absent); Marvin Krout, Ray Hill, Mike DeKalb, Greg Czaplewski, Duncan Ross, Becky Horner, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Mary Bills-Strand called the meeting to order and requested a motion approving the minutes for the regular meeting held July 7, 2004. Motion for approval made by Krieser, seconded by Carroll and carried 7-0: Carlson, Carroll, Krieser, Larson, Marvin, Pearson and Taylor voting 'yes'; Bills-Strand abstaining; Sunderman absent.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

July 21, 2004

Members present: Carlson, Carroll, Krieser, Larson, Marvin, Pearson, Bills-Strand and Taylor; Sunderman absent.

The Consent Agenda consisted of the following items: **USE PERMIT NO. 04002 and MISCELLANEOUS NO. 04006.**

Item No. 1.1, Use Permit No. 04002, was removed from the Consent Agenda and scheduled for separate public hearing.

Larson moved to approve the remaining Consent Agenda, seconded by Krieser and carried 8-0: Carlson, Carroll, Krieser, Larson, Marvin, Pearson, Bills-Strand and Taylor voting 'yes'; Sunderman absent.

USE PERMIT NO. 04002
FOR 112 TOWNHOMES,
ON PROPERTY GENERALLY LOCATED
AT N.W. 12TH STREET AND W. FLETCHER AVENUE.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 21, 2004

Members present: Marvin, Larson, Carlson, Krieser, Pearson, Carroll and Bills-Strand; Taylor declared a conflict of interest; Sunderman absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

This application was removed from the Consent Agenda and had separate public hearing due to letters received in opposition.

Becky Horner of Planning staff submitted six letters in opposition and one letter in support. Rick Peo, City Law Department, advised the Commission as to their role on the review of use permit applications. This is a use permit, not a special permit. Therefore, the standard of review is different. Based on prior case law (Whitehead Oil v. City of Lincoln), the District Court and the Supreme Court analyzed the city's use permit process and determined that it is primarily a site planning tool and not a discretionary approval process to determine whether the use is appropriate. The consideration is to be whether the use complies with the zoning ordinances and regulations. The proposed townhouses are a permitted use in the O-3 Office Park district. The Planning Commission does have a role in determining whether waivers should be granted and whether additional conditions are necessary to make the property compatible and that it will have no adverse impact on abutting properties. It is not a "yes" or "no" situation.

Marvin inquired as to the nature of Commissioner Taylor's conflict of interest. Peo stated that Taylor is President of the Highlands Neighborhood Association and he felt there could be an appearance for impropriety for him to take an active role based on his membership and leadership in that organization. There are two types of conflicts of interest. One is by statute where the Commissioner owns the property or may have a financial benefit. The city's ordinance is broader than the state statute and if a Commissioner believes there may be an appearance of impropriety, a conflict of interest may be declared on that basis.

Proponents

1. **Tom Huston**, 233 S. 13th Street, Suite 1900, appeared on behalf of the **Cameron Corporation**, the applicant who is seeking approval of 112 townhome units on approximately 16 acres at N.W. 13th and W. Fletcher. Huston gave a history of the site. When the city annexed the Highlands in the early 1990's, the land for the golf course was acquired. The remainder was sold to the Highlands Coalition, including this property. It has been

undeveloped since that time period and has gone through several zoning changes from R-3 to R-4 to O-3. Huston agrees that the townhomes are a permitted use under the O-3 zoning district, where the ordinance states that, "...A building or premises shall be permitted to be used for the following purposes.....Townhouses." Huston cited the other types of uses that are permitted in O-3, including office, single-family, two-family and multi-family, in addition to townhomes, etc., as a matter of right.

Huston indicated that he has reviewed some of the correspondence received by the Planning Commission and he knows there is concern about density. But, he pointed out that other uses that would be permitted on this parcel in the O-3 district would support 175 single family homes; 460 apartment units for multi-family; and 280 townhome dwelling units. This applicant is requesting 112 townhome dwelling units, which is roughly 40% of the maximum that would otherwise be permitted under the O-3 zoning. The 112 townhomes is comparable to what would be permitted in the R-3 zoning district in a community unit plan.

Huston noted that the staff report makes several references to the Comprehensive Plan, and he believes the Comprehensive Plan should be a good guide for the Planning Commission to move this item forward because the Comprehensive Plan calls for maximization of present infrastructure and a way to do that is to increase the number of dwelling units on a per acre basis. The Comprehensive Plan also talks about fostering home ownership--citizens should be able to afford to buy a safe and decent home. The proposed dwelling units will sell in the \$125,000 range. The Lincoln Board of Realtors' most recent calculations on average home prices have increased from \$123,000 to \$146,000, or a 20% increase, in about 4 years. The Comprehensive Plan is designed to encourage and foster home ownership and this project will help support that goal. The Comprehensive Plan also states that affordable housing should be distributed throughout the community. Therefore, this type of project is the type that the Comprehensive Plan encourages. It is at the intersection of two arterial streets and across the street from some industrial zoned land.

Huston also pointed out that this property could be platted and it could be developed without any waivers, but the waivers add some design features that are desirable for this community. Huston has also discussed improving the aesthetics with the Planning Department. There are no code requirements to do so, but they tried to address the aesthetics issue. Huston also noted that the Parks Department is requesting that a fence be constructed and this applicant is providing an easement, and is dealing with sediment control, surface water detention and landscaping concerns.

Huston stressed that this type of project is being developed in the city. The market has accepted these types of units as a safe and affordable way to buy a decent house. The Planning Department worked with this applicant to achieve the highest and best use of this property.

This is a home ownership project designed to provide housing opportunities for a segment of the market that is not being served. The covenants are designed to protect the

neighborhood and the community. There are a lot of services provided to the members from snow removal to yard care, etc.

2. Judy Anderson, 248 Parkside Lane, testified in support as one of the people looking to purchase one of these units. She has lived in Lincoln for 10 years, worked in court systems for 25 years, and she is not wanting to buy a house because of the yard upkeep. The townhome association she lives in now provides yard and snow removal. She has been an active member of her townhome board. This is a good idea for the community because there are others like herself who do not want the responsibility of lawn care and maintenance of a single-family dwelling.

Opposition

1. Gordon Bjorman, 1133 N.W. Gary Street, testified in opposition as President and on behalf of the NW Highlands Neighborhood Association. He circulated an informal petition to determine the scope of opposition and found that 85% of the residents are opposed. There are a myriad of issues all related to one core issue—the density. This density impacts many facets of our community. This plan requires waivers to all of the yard setbacks. He understands the Comprehensive Plan has goals to increase the density, but this development is too dense in too tight of a space in this existing neighborhood. With regard to safety, the increase in traffic flow is a concern because of the location in the immediate vicinity of the pool and its crosswalk. One of the two entrances is immediately adjacent to the pool. Fredstrom School is already using temporary facilities for classrooms and students are being bused to North Star. A visit to the area could demonstrate the impact of this development on the view and aesthetic qualities. This is a significant concern, significant enough that it is discussed in the staff report even though there are no code requirements. The buildings will be quite long. The neighbors believe that compatibility is more than just the elevation of the houses—the style and format of the neighborhood needs to be considered.

Bjorman suggested that this development will negatively impact the quality of the neighbors' lives and services. Bjorman showed photographs of a project in the area of 91st and Pine Lake Road depicting one style as high density homes maximizing space, and then there is another area two blocks east where the density is not as great and the homes are more in conformance with the neighborhood.

This neighborhood has put time, effort and commitment into the area. The owners live there now, have been living there, and will live there after the developer and their counsel move on to the next order of business. There are too many waivers required to make this plan work and Bjorman believes that this plan maximizes profits for a few outsiders. The neighbors are not unrealistic, are not opposed to development and are not opposed to all construction. Their desire is good planning and prosperity for the neighborhood. While the Comprehensive Plan seeks to increase the houses per acre, the plan also stipulates that the new development be compatible with the character of the neighborhood and the adjacent uses, and this proposal clearly is not.

Several people in the audience raised their hands in support of Bjorman's testimony in opposition.

Staff questions

Carroll referred to the Parks Department comments which talk about resilient materials on the exterior. Will that be part of the requirements? Horner stated that it is a requirement of the approval of this use permit, so there will be a note added to the site plan. At the time of building permit, it will be verified by the Building & Safety Department. That is only on the golf course side.

Larson inquired about a traffic light by the pool. Chad Blahak of Public Works stated that Public Works has studied that crossing and at the time, it did not meet the warrants for a pedestrian crossing. It will be studied again at the completion of the Fletcher and N.W. 12th roundabout to reassess the needs. Larson believes consideration should be given to the fact that almost all of the people using this crossing are youngsters and there should be a different standard for that kind of crossing.

Carlson quoted the passage in the Comprehensive Plan about preservation of residential character and compatibility. He asked staff to cite the conditions that help insure compatibility. Horner advised that the staff asked the applicant to orient the fronts of the buildings toward the streets, although this could not be made a requirement. The applicant showed the staff computer generated information that showed shutters and awnings and other things to scale down the building. It was their suggestion to provide a frontage to N.W. 12th Street.

Carroll referred to hole #10 on the golf course, suggesting that people who tend to slice will result in the golf ball going towards these townhomes. Is there any liability to the city, and at what point in time does the city make the decision to put up a net? Steve Hiller of the Parks Department stated that typically, case law associated with golf courses has said that the individual who hits the golf ball is the one that is responsible for any damage by the hitting of that golf ball. There are several cases that exist where the golfer has been found responsible for any damage or injuries or costs. In terms of a net, he is hopeful that we do not get to that point. A net would be a real burden to maintain. There are nets in some locations and they are quite difficult to maintain because of the fact that they are quite tall and very hard to support; they don't last for a long period of time; and they are a constant maintenance headache. Hiller did not know what the deciding factor would be to require a net. He also does not understand what history has to do with this proposal. The golf course has been there since 1992. This development is coming in 12 years after the establishment of the golf course. The staff has made it clear to the developer that this is an area where golf balls do fly. They have discussed the potential for additional landscaping on the golf course property to help deter as many golf balls as possible. They have discussed developing a more natural area along the border of the golf course as a deterrent to keep golfers away from that area and to encourage them to stay in the fairway.

Pearson asked about the philosophy of waivers. This development requires front, rear and side yard setback waivers. She understands the side yard, but there are a lot of other waivers being requested. Horner explained that the depth to width ratio waiver is very standard with townhouse lots. The Planning Director has authority to approve this waiver on townhouse lots, but it has been included here. With regard to the yard setbacks, the applicant indicated the purpose was to bend the road a little bit and provide for more relief of the buildings. There is an outlot around all of this so they would not need some of these waivers. The waiver of the preliminary plat process is pretty standard now.

Marvin asked staff to discuss the history on the zoning on this property. Horner stated that the property was zoned R-3. In 1994, the owner came forward with a request to O-3; the staff recommended denial of O-3 saying it was appropriate for residential uses. The Planning Commission and City Council denied the O-3 request and the City Council countered with R-4. The owner waited two years and came back for O-3 in 1996. The staff again recommended denial of the O-3 and the Planning Commission and City Council approved it at that time.

The homes across the street were built in late 1990's, 2000, and 2001. Marvin asked Horner whether it is fair to say the purchasers across the street bought under the understanding that this property was going to be lower density residential than what is being proposed today. Horner responded, stating that in 2000 it would have been zoned O-3 and they would have been able to see the uses allowed in O-3. Even under the R-4 district, the owner could have asked for a CUP, which would have changed the configuration. She could not say what purchasers might have understood when they purchased their lots.

Response by the Applicant

Huston addressed the waiver issue. The site plan shows the street meandering. The developer had toyed with and discussed a different concept which did not have the curve in the street. That site plan does not require any of the waivers now being requested. The waivers are designed to allow us to address the aesthetic concerns, recognizing there are no code issues. These waivers are no different than were approved in other similar projects around this community and no different than a project which the Planning Commission recommended for approval two weeks ago. These waivers are accepted within the industry and planning world for this type of development. If they had not platted the common area to be used and enjoyed by all the residents of this community, they would not need the waivers.

With regard to compatibility with the neighborhood, Huston pointed out that N.W. 13th Street is 100-110' width right-of-way. Condition #1.2 requires that those units that face the street screen their patios. That is something none of the other projects have been required to do. As far as the less dense project at 91st & Pine Lake Road to which the opposition referred, Huston pointed out that those units are selling for \$180,000 to \$190,000, which does not address the segment of the community that this development is attempting to focus upon. We have to be willing to live by the rules that we have created. This is a permitted use and there is not a lot of discretion.

Carlson wondered why a Talent Plus type situation--an office zoning employer--did not work out all the time the property was zoned O-3. Huston stated that he does not represent the prior property owner, but when you look at the requirements in O-3, there is a difference in height limitations. For residential uses in O-3, the height limitation is 35', but for office uses it is a 45' height limitation. This project is restricted to 35' height by the code requirements.

Huston also suggested that the O-3 district is a very broad district. In 1992-93, he worked with the Highlands Coalition and the city to get the SID out of bankruptcy and the O-3 zoning was used because of its flexibility and the lack of knowledge as to how the area might be developed. This is a permitted use under the O-3 zone and that is why the applicant did not request a change of zone to R-3.

Pearson pointed out, however, that if it were an O-3 building at 45', it wouldn't be nearly this long. She is not convinced that the units facing the golf course are going to sell for \$125,000. Huston's response was that on an average, it is fair to say the maximum price will be under \$130,000.

Pearson also suggested that if waivers were accepted as standard, the Commission wouldn't be contemplating them every time they come up.

Bills-Strand asked Rick Peo to restate the role of the Planning Commission in review of use permits. Peo advised that use permits should not be granted unless in conformance with city ordinance and regulations applicable to the zoning code. The Planning Commission can impose conditions to insure compliance with the Comprehensive Plan and to protect the health, safety and general welfare. Such conditions may include increase in minimum yard requirements, decrease in maximum height, consideration of effect on the surrounding neighborhood, etc. The City Council makes the final decision on the waiver requests. The use permit process has been under litigation and parameters were established by the Supreme Court as being a site planning tool. The Planning Commission's discretion is limited first to determination of whether the use is a permitted use in the district (townhomes are a permitted use), and secondly, whether or not it fits in and complies with the requirements unless waivers are granted. The limitation is to site related issues – are the setbacks sufficient, whether they be with or without waivers. The Commission must look at the project as a whole as to achieving compatibility based on neighborhood uses and Comprehensive Plan considerations. If the Commission is going to find that the project is not compatible or not in compliance with the Comprehensive Plan, then the Commission needs to be making specific findings to that effect to justify the rationale for imposing any additional conditions.

Pearson asked Peo to define "public health, safety and welfare". That is what this board is here to determine as well as the land uses. Peo suggested that it refers to public health, safety and welfare in relationship to the rules and regulations that the city has adopted. In this particular area, there are standards.

Marvin offered a scenario. If this property was next to a shooting range for clay pigeons, and there was a residential area at the far end, would it be permissible for Planning Commission

to find that to be a site related issue and that it is not appropriate for a residential area to be in close proximity to a shooting range? Peo recalled a situation in the county where it was not so much that it was prohibited but there was a greater setback established to say that houses could not be in the likely range of errant shots. It did not prohibit the ability to protect by providing added setback between the two uses to achieve the compatibility as opposed to trying to prohibit.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

July 21, 2004

Marvin moved to deny, seconded by Pearson.

Marvin stated that when he found out the property was zoned O-3 (and he probably has more information than most of the residents), he envisioned an office with dentists, etc. He was surprised with this plan and he is sure many of the residents were surprised. He knows that the Commission has been given direction by the Law Department, and since it is in the O-3 zoning, the Commission is kind of "pinched" in terms of whether they can actually vote "no" on this issue. But, Marvin believes there is enough latitude here that he can vote to deny and defend his vote.

Carlson agreed with Marvin. As far as a specific finding, he pointed to all of the neighbors that indicated their opposition to the design character, and since compatibility is called out in the Comprehensive Plan, that is what becomes the issue for him. His finding is that the issue of compatibility has not been resolved.

Carroll is concerned about all of the waivers, especially along the golf course side. People are going to want to buy there for the view, but they will realize that they don't want to live there because of the golf balls and we will end up having vacant houses and tenants. Perhaps the applicant could change the design so that they wouldn't need some of the waivers. He does not believe it is prudent for this site to allow those waivers and make it difficult for people on the golf course.

Bills-Strand reminded the Commission that their role is to determine whether the use complies with the zoning ordinance. She does not necessarily like the design in that there should be more setback along the golf course for reasons of safety, but the Commission's role is to say whether the use complies. We can change the waivers and put the burden on the developer to provide for the safety.

Larson believes there are just too many units squeezed in there. Safety considerations and heavy traffic near the swimming pool and golf course are other reasons that he cannot support the application.

Motion to deny carried 6-1: Marvin, Larson, Carlson, Krieser, Pearson and Carroll voting 'yes'; Bills-Strand voting 'no'; Taylor declaring a conflict of interest; Sunderman absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 04035
ANDREA'S COURT COMMUNITY UNIT PLAN
ON PROPERTY GENERALLY LOCATED
AT 40TH STREET & SUPERIOR STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 21, 2004

Members present: Marvin, Larson, Carlson, Krieser, Pearson, Taylor, Carroll and Bills-Strand; Sunderman absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: Bills-Strand reported that she had received a telephone call from one of the neighbors inquiring about the hearing process and procedures.

Greg Czaplewski of Planning staff submitted additional information for the record, including two letters in opposition. He also submitted a new Condition #5.6 requested by the Building & Safety Department, requiring that the developer obtain a floodplain fill permit. It is something they would have to do anyway. The staff report was in error in stating that they already had a fill permit.

Proponents

1. Gus Ponstingl of Ross Engineering appeared on behalf of **Green Development Corporation and Believers Fellowship Church** and presented the proposed development for 16 townhouse units on approximately 9.4 acres located at the corner of Superior and N. 40th Street. There will also be a church developed on the northeast corner of the site. The church owns the property. Both the developer and the church thought it would be better to approach this development jointly and the result is a project that helps the developer, the church and the adjacent community.

There will be a private roadway for the townhouses, which are located on the south portion of the site. The private roadway will be 27' wide paving with concrete curb and gutter, with private sanitary sewer tying into a larger public main. There will also be a 6" water main that will tie into a larger water main along North 40th Street.

Ponstingl noted that there is an existing wetland that has been farmed out and difficult to find; however, the developer is proposing to restore the wetland and create a 25' buffer around it with an outlot over that wetland.

2. Ron Ross, Ross Engineering continued the applicant's presentation. Believers Fellowship has owned the property for 12 years. It has been farmed in soy beans and corn. This is the first year it has not been farmed. The wetland was delineated back in 2002. If you attempt to find the wetland, you will not find it. You will only find one of the three characteristics, and that is the soils. This development will do a minor amount of grading and filling of .02 of

an acre and will add .05 of an acre. The applicant has applied for a permit from the Army Corps of Engineers. This developer will restore the wetland and proposes an educational and social use of that restored wetland.

Ross explained that when the church began work on this project, they submitted a fill permit which was not approved because the other party walked from the project. The first fill permit was for filling the entire project. Ross informed the church that it was not the best thing to fill the entire project. The church and developer joined forces and they now have support from Watershed Management. The FEMA drawings for this area have a stipulation suggesting that the city will not fill this reach of Salt Creek any more than 75% of what would otherwise be allowable fill within this reach of Salt Creek. This development is filling slightly less than the 75% because the grading has been kept down. The only thing being filled is the church facility. The townhouse units have to be filled 1' above floodplain. The amount of fill has been substantially reduced from what the church was initially submitting. This project is within FEMA's recommended requirement of only 75% of that volume.

Ross also noted that Turner Ditch to the south is a major tributary. Water will be discharged from the townhouses and a little bit of the church. About 4-5 acres will be going directly into Salt Creek by an existing storm sewer. This development's contribution to Turner Ditch is extremely insignificant. An analysis of the hydrology of Turner Ditch was conducted. With elevation of 1139, the surface water of the 100-year storm is 38.7, so actually water will be contained within the top of bank. The townhouses on the north side of Turner Ditch are about 5' above the top of the bank and above what will be considered the high water flowing through Turner Ditch.

Ross reiterated that this development respects the previous mapped wetland.

With regard to sidewalks, Ross stated that it is the developer's opinion that a sidewalk on the south side is not a definite necessity in this small dead-end private roadway. He believes the sidewalk has been waived in similar situations. This waiver is not being requested because of cost considerations. The desire is to keep the southern units as far away from Turner Creek as possible, thus they pushed those units to 25' from the south curb line of Ballard Court, putting a little more rear yard into the southern townhouses. Ross would agree to putting the sidewalk back in, but this would require deleting the guest parking stalls. The waiver is requested to allow the townhouse units to be a little bit further to the private roadway and to provide more green space in the back of the townhouse lots.

Pearson noted that the map submitted by the applicant today is different from the map in the Planning Commission agenda. Ross concurred. The ballpark has been turned.

Carroll confirmed that the wetlands will be an outlot controlled by the church. Ross agreed. There will be a homeowners association for the townhouses and they will join hands in maintenance of the common area but it is under the jurisdiction of the church.

Bills-Strand inquired about a sidewalk access to the basketball courts and ball parks for the people across the street on 40th Street. Ross stated that the church has extended opportunities for the neighborhood to use these recreational facilities. There is sidewalk

access at the private roadway and the developer will consider another sidewalk at the driveway entrance of the parking lot for the church.

Opposition

1. Ken Ward, 4035 N. 40th Street, testified in opposition. The majority of the neighborhood just found out about this project a week ago today. They held a meeting on Friday and do not believe their questions have been answered. The neighbors have not had an opportunity to talk to the developers. The neighbors are not completely against the land being developed, but they would like some input and have the opportunity to discuss their concerns, including traffic. There have been numerous accidents on 40th Street. Between 27th and 48th Street there are only two small long blocks of streets to get from Cornhusker Highway to Superior Street. 40th Street is already carrying 15-25% more traffic than it was designed to handle. Ward has had two accidents getting in and out of his own driveway. The police have been called hundreds of times to set up traffic monitoring.

The neighbors are also concerned about the waiver of the yard standards as to whether the line of sight will be acceptable.

Ward has lived in the area since 1972, and the sanitary sewer system has been a tremendous problem and the city is constantly monitoring it today. The neighbors would like to have some assurances about this issue. They are concerned about the flooding. Turner Ditch does run at capacity. There are a number of neighbors who were sandbagging their homes in July 1993 or 1994 because it was overflowing.

While the wetlands is being farmed, Ward assured that the thousands of geese he sees in his back yard on a regular basis know that there are wetlands there.

Ward recommended that a study of the entire area be done to see what effect this development might have on some of these issues. There is some concern in the neighborhood about the size of the cul-de-sac and he pointed out that the staff is recommending that there be no parking on either side of the street on a 600' long cul-de-sac. With 32 units of at least 2 cars per unit, he is concerned about the parking and what it is going to do to the potential accidents on 40th Street.

Ward submitted a letter signed by 104 people in this area in opposition.

2. Joyce Schriener, 3840 N. 42nd Street, testified in opposition. In addition to the concerns raised by Mr. Ward, another concern is the number of waiver requests concerning setbacks in this small area – 32 townhouses on less than 5 acres – if you look at the type of development already in the area, you will see large lots with a lot of green area. Therefore, she does not believe this development is compatible. She has talked with the Planning Department and asked whether they had toured the area, and they had not toured the area other than the specific site. She is also concerned about the amount of fill they are proposing.

She understands the 75% guidelines and knows they are coming in with less than 75%, but she believes it is a very, very small amount less than 75%.

3. Robert Converse, 3921 N. 42nd Street, testified in opposition. Because this development is in the floodplain, flood insurance will be required and it will be a \$600/year premium. He wonders if anyone has considered what impact the Antelope Creek widening project will have on Salt Creek. Flooding further downstream could easily occur and the Superior Street bridge is the first downstream narrowing and could be affected. He has not seen when the church will be built. They have owned the land for almost 14 years and what guarantee is there that it will ever be built? The proposed building is only 90' x 90', which is only 8,100 sq. ft. Without the church, where will water come from to maintain the ballfield? What will house the water meter? Are there plans for recreational facilities without the church? What about ballfield lighting? How can 32 units be granted in 4.62 acres when measurements are taken from the centerline of 40th Street? He believes the density is too high because of the waiver requests. What guarantee is there that the recreational area will be built and maintained? The church has owned the land since 1991 and during this entire time, no improvements have been made. There is no provision for a playground.

Converse also suggested that after the grade is brought up to the finished elevation, the south edge of the lots along Turner Ditch will need protection because of the drop-off.

4. Lawrence Fournier, 3748 N. 44th Street, testified in opposition. He visited the neighbors and they were all surprised about this development. The neighbors have lived there for 30-55 years. They are all stunned, basically about the traffic. 40th and 44th Streets are in dire need of traffic signals at both ends. The concern for most of the residents on 44th is traffic. Traffic has increased since the North Star High School has opened. Fournier believes that the traffic would increase and he requested that the Commission seriously consider taking more time to look at this proposal.

Staff questions

With regard to street widths and traffic, Marvin commented that 40th Street is a two-lane roadway, 27' wide, which connects Superior Street and Cornhusker Highway. What does the city own beyond the 27' in terms of right-of-way? Chad Blahak of Public Works stated that it would typically be 60' or 50' of right-of-way (either 30' or 25' feet on either side from centerline). It is functioning now as a collector street of 66'. Marvin is concerned about units 1 and 32. If the road ever went to five lanes, not only are the homes on the east side going to get pinched, but the ones that we haven't even built yet would be landing in a spot that could later push the road right up next to the building. Blahak did not know the Comprehensive Plan designation for 40th Street, but he does not believe it would become a 5-lane roadway. The 66' right-of-way is enough to accommodate the 33'.

Larson inquired about the "no parking" provision. Blahak explained that the comment about no parking only pertains to the turnaround at the end of the cul-de-sac. The driving lane going

around the island does not allow parking. If there is room in between driveways along the cul-de-sac, parking would be allowed.

Carlson asked for confirmation that Stormwater Management is satisfied. Devin Biesecker of Public Works explained that under the current code requirements, the development is allowed to fill in the floodplain as long as their structures are elevated 1' above the 100-year elevation. They can fill their entire site and there is no limit on the amount of fill. The entire site is within the 100-year floodplain. In areas of Salt Creek, it is recommended that in certain storage areas they give a percentage of fill to insure that when the areas are filled we can maintain the allowable 1' of rise in the floodway. For this area, that was listed as 75%, and Public Works asked the developer to stay within that limit.

Carlson noted that Turner Ditch has a mechanical flood door that can be closed if Salt Creek rises too high. When it is closed, it back-floods this area of the floodplain. Presumably the new places would be 1' above, but does Public Works have any sense of the floodplain impacts? Biesecker does not believe the flood gates were taken into account in the study. When the flood gates are closed on the levee it will back up water but he does not know how far.

Blahak clarified that the Comprehensive Plan does not show any future widening of 40th Street.

Bills-Strand inquired about traffic signals at 40th & Superior. Blahak stated that there are none at 40th & Superior. The nearest traffic signal is at 48th & Superior. Public Works tries to get back to each intersection on a 2-year periodic basis to review it. He believes that the last time this was researched it did not warrant a signal. Another study can be requested. Bills-Strand is hopeful that it will be studied because of all the development at 27th & Superior, including North Star High School.

Bills-Strand is concerned about parking. She knows from living in a townhome area that when you entertain guests, it is difficult to park in the townhouse area because the driveways are so close together. Is there ever any consideration given for some additional off-street parking? Blahak indicated that it is a frequent recommendation from Public Works that additional parking be provided for these townhouse developments. Czaplewski clarified that the only parking required to provide is two stalls per unit, and this application provides four stalls, two in the driveway and two in the garage. There is no code requirement beyond that. This application meets the parking requirements.

Pearson observed that with 32 units at four additional cars per unit, there will be 128 cars coming out of Ballard Place. She disagrees that this is not going to affect the traffic on 40th Street. She would like to hear the developer's response.

Taylor noted that the speed limit is 25 mph on 40th Street and the speed limit on Superior Street is 45 mph. Is the problem of speeding on 40th Street? He wonders what time there are traffic speeding concerns. The neighbors indicated that it is during rush hour. Taylor stated that he has experienced very little traffic on 40th Street during his visits to the area during the day.

Marvin asked staff to respond to the issue of notice to the neighbors. Czaplewski advised that a sign is posted on the property and written notice is mailed from the Planning Department 10 days prior to the hearing.

Taylor questioned the necessity of a traffic signal at 44th Street if there is one at 48th Street. Is it feasible? Czaplewski understands that the traffic concerns are generated by the peak traffic hours. The last time the intersection was studied, it did not warrant the traffic signal.

Response by the applicant

Ross clarified that the applicant is not requesting a change of zone. The property is zoned R-3. The church can build on R-3 by right. They already had a fill permit request, but this proposal shrinks it down with much less dirt. The application before the Commission today is a community unit plan. This developer could come in and change this to single family lots in R-3. But, the applicant wants to create affordable housing in this area with two-unit townhouses. There are apartments across the street on the east side of 40th Street; and there are apartments on the south side of Superior Street, followed by a combination of a couple of single family homes and townhouses. This is a nice area, and this applicant is not here to affect the neighbors' way of living but to create a compatible situation with the church. The applicant could come back and not even request a community unit plan, but rather a straight preliminary plat and he does not know how the city could deny the use of R-3 zoned property. But that is not what this applicant wants to do.

Ross pointed out that the building envelope being shown is 35' x 60'. The units are not that big. With the architectural drawings, it appears that they could shrink down the building envelope. This would result in a very slightly modified site plan and would not require any waivers. But the difference is only 3.5'. The units were located closer to the private roadway to put more space in the back. If the Commission wants to strike the waivers, they can shift the units back with the proper front yard and proper rear yard. The overall diameter of the cul-de-sac is 6' bigger than the city's requirement for a private cul-de-sac. It is configured a little bit differently so it requires a variance. If the Commission does not want to grant the waiver, they can certainly build a slightly smaller cul-de-sac.

The applicant does not have to restore the wetland, but that is what they want to do.

Ross also suggested that they could build 50 single family lots with the R-3 zoning. Is the City going to say "no" to a single family development?

As far as parking, Ross explained that the units will have a double-stall garage with parking in front of the garage. This application provides space for four cars per unit plus another

seven guest stalls. They may add a few more parking stalls. They want a development that does not cause parking problems on 40th Street, so Ross assured they would take a look at this issue.

Ross also assured that the church does want to build. The church has been waiting for this opportunity for some time. They have a buyer that is ready to go. The church has authorized the engineer to prepare construction drawings for the grading and storm sewer and they are prepared to start immediately on the church's site. This starts their church with the funding coming from the sale of the south area.

Again, Ross stated that the lots are 40' x 100'. They can move the units slightly if the Commission prefers no waivers. The normal lot is 5,000 sq. ft. These lots are at least 4,000 sq. ft. If we needed to take more land to the north, we could do that, but this is a joint project where both the development to the south and the church to the north are paying for the recreational facilities.

As far as traffic volumes, Ross stated that he has been out in the area on eight occasions recently and he has never seen a back-up. It is a 66' wide right-of-way. He is not here to fight the traffic signal battle. He hopes it will be studied and that a traffic signal will be warranted. But, a development like this should not be stymied because of the traffic signal issue.

Ross apologized because the developer did not know there was an organized neighborhood group. The church did send out a letter and he agrees that it should have been sent out a week sooner.

Ross does not believe there is a drainage problem. If it backs up, the water will back up over 40th Street and will go through the drainageway and back up into those areas. They are not required to put all of that storage of water in this 9.4 acres.

Pearson inquired as to the schedule of development, i.e. what is going to be built first? Ross indicated that there are some pre-sold units and they will start immediately on the private roadway. They can start with eight units because they have water and access. The site grading for the entire project will all be done under one contract. They do need to get the wetlands issue resolved, but they plan to start immediately. He estimated that all of the townhouses will be built in two years. The church is extremely anxious to start their project. The volleyball court will be built with the townhouses, followed by the other recreational facilities, but they are grading the entire area.

Pearson asked whether the developer would agree to add a new walk connecting the pavilion to the public sidewalk. Ross indicated that they would agree to do so.

Marvin inquired about the need to buy flood insurance. Ross stated that the units are required to be 1' above the 100-year floodplain. The lots are being graded to be outside of the 100-year floodplain. There are no basements because basements are not allowed in the 100-year floodplain area.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

July 21, 2004

Carlson moved to deny. Motion failed for lack of a second.

Carroll moved to approve, with conditions as set forth in the staff report, seconded by Larson.

Pearson moved to amend to strike “minimum lot area” and “required front and rear yard setbacks” from the waiver approvals in Condition #2; to add a condition to provide a public access walk connecting the pavilion to the public sidewalk; and to encourage Public Works to re-study the area for a traffic signal at 40th and Superior, seconded by Marvin.

Pearson believes that denying these waivers will push some of the units further away from Turner Ditch and put the sidewalk back in on the south side of the road and maybe make the softball field and the amenities more accessible to the neighborhood. She believes there will be increased traffic on 40th Street.

Because these homes do not have basements, Bills-Strand would like to see them use as much of the building envelope as possible to get decent sized living areas. If the Commission wants to shorten the back yards along Turner Ditch, she wouldn't mind, but she would like to see at least the ones backing up to the softball area utilize a bigger building envelope. Pearson believes they can increase the size of the units because the available area is already larger. They're just not utilizing the whole thing.

Motion to amend carried 8-0: Marvin, Larson, Taylor, Carlson, Krieser, Pearson, Carroll and Bills-Strand voting 'yes'; Sunderman absent.

Carlson's concern is the floodplain. Townhouses will be protected but this is a classic example of “where does that water go?” You have a flooding situation for the surrounding property owners because there is no requirement that this development do anything to not flood out their neighbors. In addition, you have potential additional danger for the existing townhouses because there is no FEMA mapped study based on that ditch flood door being dropped. If Salt Creek starts to rise and the flood door is closed, you've got Turner Ditch water backing up and flooding. We don't know if the townhomes have proper engineering in order to be protected. He is very aware that those “no net rise” requirements only apply to areas outside the city limits, but the Comprehensive Plan tells us that,

...future urban development will be outside the floodplain and floodway. This helps new development avoid potential flood risks and preserves the important functions of the floodplain. Keeping development outside of the floodplain preserves flood storage and other natural and beneficial functions of floodplains. It also avoids the long-term, cumulative impact of development in the floodplain.

Carlson stated that his guide is from the Comprehensive Plan. As he sits on this Commission and gives guidance to the City Council, the Comprehensive Plan tells him to avoid this situation. We can engineer ourselves out of that situation by creating new standards, but it is a floodplain issue that causes concern for him.

Motion for conditional approval, as amended, carried 7-1: Marvin, Larson, Taylor, Krieser, Pearson, Carroll and Bills-Strand voting 'yes'; Carlson voting 'no'; Sunderman absent. This is a recommendation to the City Council.

**** 10 minute break***

PRELIMINARY PLAT NO. 04016
WHISPERING CREEK
ON PROPERTY GENERALLY
LOCATED AT S. 112TH STREET AND
OLD CHENEY ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 21, 2004

Members present: Marvin, Larson, Carlson, Krieser, Pearson, Taylor, Carroll and Bills-Strand; Sunderman absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Proponents

1. Kent Seacrest appeared on behalf of **Patricia Slaughter and Connie Heier**, the two property owners. This is a project on the east edge of Lincoln, in Tier II of the Comprehensive Plan. The property is zoned AGR and this is a proposal for 50 acreage lots under the AGR zoning. The Comprehensive Plan shows low density residential designation for this property. Rural water is available from the Rural Water District.

This developer has wanted to develop this tract for eight years. The East Beltway decision stopped this development for six of those eight years. The applicant did go forward with an application, along with seven others, and the Planning Commission deferred those applications pending development of the new Comprehensive Plan. The Comprehensive Plan was adopted by the City Council. About two days after the Comprehensive Plan was adopted, Seacrest wrote the letter referred to in the staff report because he thought it would be appropriate to seek the AGR zoning at the same time as the low density residential designation. One week later, the Mayor wrote a letter to the eight applicants stating the rules of engagement since the Comprehensive Plan contained build-through but we still had eight

pending applications. The Mayor indicated that the Commission was free to look at the prior Comprehensive Plan to judge the application instead of the new Comprehensive Plan. Therefore, Seacrest does not believe there was any requirement in the Mayor's letter that required this applicant to do a build-through. However, the applicant felt it important to continue to go forward and do the build-through. This was the only application that was approved. Both the City Council and County Board approved the low density residential designation.

The applicant then came forward with the AGR zoning and the Planning Commission and City Council approved that zoning request. There were supposed to be three studies on acreage build-through model issues, and the Mayor's letter indicated that if those studies were not approved or on the books, the Commission was to go forward and approve based on the old rules. None of those three studies have been formally adopted. The Mayor appointed a task force on acreage development and we did work with staff and their consultant. Seacrest's clients asked Brian Carstens to do a build-through model. The first version was their attempt to take three or four urban lots and cluster them. They studied that question and showed it to the task force. This would require grading the whole site out like it is urban development and it was determined that there would be too much cut and too much fill.

The applicant then came forward with another build-through model – one-acre lots with the balance left open so the city could grow. Seacrest and his clients were concerned about the neighbors with there being a big central lagoon and they were also concerned about DEQ approval. There was no density bonus to do this plan. It was costing \$8,000 more per lot to do this model.

The applicant then sat down with the Planning Director and reviewed both build-through models, but the applicant determined that it was not economically feasible on this site given the hills. They do not have the right situation for the build-through. Seacrest also stated that there is no legal requirement to do a build-through but this applicant completed the moral commitment to try.

Seacrest advised that the applicant did meet with the neighbors. Six of 49 neighbors attended. The staff is recommending conditional approval and Seacrest accepted all of the conditions. He pointed out that the City Law Department is advising the Commission that if the application meets the minimum requirements of the subdivision ordinance, this is a ministerial action and should be approved.

There was no testimony in opposition.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

July 21, 2004

Krieser moved approval, with conditions, seconded by Larson.

Carlson stated that he will not support the motion. He was involved with the 2002 Comprehensive Plan and the draft preparation of the acreage plan. Mr. Seacrest,

representing the Heiers, and other acreage owners came forward to argue that the acreage plan we had put forward based on GIS data was too restrictive. They wanted a less restrictive policy. The draft policy said we should keep acreages out of the future growth tiers. Seacrest argued that he understood that, but he suggested we create a build-through plan and engineer ourselves out of that situation. Based on that idea of build-through, Tier II and Tier III were allowed acreages if they did a build-through model. We had five Comprehensive Plan amendments in 2002--four were placed on pending until the studies were completed; this one moved through on a vote of 5-4 under assurance that this would be developed as build-through. On December 3, 2002, the Comprehensive Plan amendment was approved and the application for AGR change of zone was made. Carlson wonders what the property owners who are properly sitting on pending waiting for the results of the studies may be thinking? The draft cost of rural services study was released. Although not yet formally adopted, the Planning Commission has seen it and it is a 5.5 million dollar cost for this type of scattered acreages in the county. It is an additional cost to taxpayers.

Carlson went on to state that now we have this development in front of us, asking us to approve these 50 acreage lots, and now we're being told that build-through was just too expensive and they couldn't do it. Carlson does not find that argument compelling. The draft original Comprehensive Plan and GIS mapping showed that there are good and bad places for acreages. If you're in a bad place, then maybe you shouldn't have acreages there, and in order to have acreages there, maybe it is going to drive up the developer's cost. We should not put acreages where they are going to be "in harm's way".

The zoning is already in place to do AGR. The applicant pulled the community unit plan because it allows the Planning Commission greater discretion and latitude. Page F71 of the Comprehensive Plan states that,

New "urban acreage" developments should only be permitted in Tier II and Tier III area of Lincoln and near towns under higher design standards based upon a "build-through" model and without use of sanitary improvement districts. The "build-through" design standards should address, along with other items deemed necessary by the study:

- a preliminary plan lot layout that accommodates first phase low density acreages with rural water and sewer systems....
- a lot layout that meets the various elements of the Comprehensive Plan; and
- a development agreement that runs with the land and acknowledges that the acreage development (i) is not entitled to extra buffering protection greater than the acreage property lines from existing agricultural practices and from future urbanization and (ii) waives any future right to protest the creation of lawful centralized sanitary sewer, water and paving special assessment districts or other lawful financing methods at a later date when urbanization is appropriate.

This was the language offered for building acreages in Tier II and III. To come in now and say it's just too expensive, he thinks it is a circuitous argument. This idea that they should not be judged by that standard is equally wrong. The then Mayor Wesely's June 11th letter states that acreage development submitted prior to adoption of Comprehensive Plan,

“...should be judged on the basis of standards formulated for the new Plan. While the applications were submitted in advance of the Plan's adoption, the rules of the new Plan apply today, and thus any application processed subsequent to the Plan's approval should comply with the new standards. However, I also understand the consideration of “fairness” and the difficulty these transitional situations present in reviewing proposed development. As such, I am prepared in this case to support the Commission, Council and Board should you choose to review these applications using the standards from the prior Comprehensive Plan. Each case will need to be judged on its own merits and a determination made as to its appropriateness.

Therefore, Carlson believes this is a situation that is very unacceptable. We have acreage studies properly sitting on pending that have not moved forward while others have and he does not believe it is appropriate.

Pearson noted that the staff reports had been including the points for development even though they are not adopted. The frustration she has is that the Commission has been promised something to evaluate acreage development, yet no tools have been given. It has been promised since the Comprehensive Plan was adopted. It is difficult to evaluate an acreage development without the tools we have been promised for well over a year, so she will vote against this proposal as well.

Motion for conditional approval failed 4-4: Larson, Taylor, Krieser and Bills-Strand voting ‘yes’; Marvin, Carlson, Pearson and Carroll voting ‘no’; Sunderman absent.

Carlson moved to deny, seconded by Pearson. Motion failed 4-4: Marvin, Carlson, Pearson and Carroll voting ‘yes’; Larson, Taylor, Krieser and Bills-Strand voting ‘no’; Sunderman absent.

Application held over due to lack of five votes. This application will be scheduled for continued public hearing and action on August 4, 2004.

MISCELLANEOUS NO. 04005

48TH AND “O” STREETS REDEVELOPMENT AREA

BLIGHT AND SUBSTANDARD DETERMINATION.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 21, 2004

Members present: Marvin, Larson, Carlson, Krieser, Pearson, Taylor, Carroll and Bills-Strand; Sunderman absent.

Staff recommendation: A finding that the area is blighted and substandard.

Ex Parte Communications: None.

Proponents

1. Wynn Hjermsstad of the Urban Development Department presented the proposal for blight and substandard determination for the 48th and O Street Redevelopment Area. The criteria for identifying an area as blighted and substandard is strictly spelled out in state statutes.

The Mayor and Urban Development Department have received a lot of calls about doing something to this area since all of the car dealers have moved out. It is a very visible location. It's current condition does not reflect well on the city. Thus, the Mayor directed the Urban Development Department to have the blight study done.

After Planning Commission, this determination will go to the City Council. If the City Council ultimately declares the area as blighted and substandard, the next step is to prepare a redevelopment plan. This cannot be done until the area is declared blighted and substandard. It is after the redevelopment plan is prepared that RFP's are extended and a developer or developers are selected to do projects on the site. At this point, Urban Development does not know what is planned for the area. There are no specifics at this time, but they do have some general ideas. Obviously, it will not be a single family location, but rather some sort of commercial redevelopment project. Mixed use would be desirable. There has been some developer interest, primarily on the north side of O Street, but nothing specific.

Hjermsstad advised that Urban Development has had conversations with the Witherbee Neighborhood Association, which abuts on the south side. Urban Development acknowledges that there are concerns and will continue to work with the neighborhood to address their concerns, such as lighting and incompatible land uses. Urban Development has also met with a number of the property owners.

Hjermsstad submitted a revised zoning map correcting an error on the map that was submitted to the Planning Commission.

Bills-Strand expressed continued frustration about getting these larger volume projects and trying to work through them in a short time. Is this only a blight study and absolutely no recommendation or zoning changes? Hjermsstad concurred that it is just the determination of blighted and substandard – nothing else.

Larson pointed to page 34 of the study which discusses a conflict for pedestrian traffic. Hjermsstad believes that is referring to the uses that are already there, such as Super Saver and Target. There is no specific developer nor specific businesses at this time.

Marvin inquired how the boundaries for the redevelopment area were chosen. Why was the decision made to extend into the R-2 area? Hjermstad explained that one of the R-2 areas is vacant and provides a buffer to a residential area, and the other R-2 zoning is a parking lot. They chose to extend into the R-2 zoning to insure the buffer to the residential area continues. The ownership is another reason.

Marvin inquired whether the Doane College building is included in the redevelopment area. Hjermstad confirmed that the Doane College building is included. There is a big drainage ditch back there. Public Works is in the process of doing a large study in that area as well, so all of those buildings back there are impacted by the drainage.

Marvin asked for an explanation of the meaning of the word “blighted” as a lot of people get the impression we are talking about dilapidated buildings and run-down areas of town. Also, why are Schaefer and Armstrongs included? Hjermstad explained that it (blighted) really is a good thing because it is what enables Urban Development to do a redevelopment plan. The reason is to redevelop the area and it opens the door to creating TIF districts which is how the improvements are financed. It can be land acquisition and land assembly, but the TIF funds can also be used to help pay for the drainage issues. It often includes some kind of streetscape projects, and sidewalks and alleys. Armstrongs and Schaefer could benefit from having those kinds of improvements made in the area.

Larson believes that the TIF clause is restrictive. Hjermstad indicated that it is primarily land assembly, relocation of tenants or property owners and then it is all public right-of-way. We do not do any building of buildings. We don't do anything that is considered private. We can do land acquisition, site preparation, utility work, lighting, burying overhead lines, clearing the site, demolition, environmental assessments, etc. She further explained that the TIF funds do not have to follow the redevelopment area boundaries. Although, when we determine the boundary of the TIF district, we do need to look at cost/benefit, so it is likely that it could be a larger area.

Bills-Strand inquired whether all of the property owners were notified of this action. Rick Peo of City Law Department advised that the statute does not require individual property owner notification. There is case law that the property owner does not have a right to maintain or have a blighted designation removed. This is the characterization of an area. It is an overall evaluation of an area and its only function and purpose is to allow for future events such as redevelopment plans to allow redevelopment to occur and utilize TIF funds in that area that has been declared blighted and substandard. It does not have a negative effect on tax assessments. There is an area in the statute that requires that certain abutting areas be advised of the situation, primarily for schools and education type things because the designation will potentially affect how tax dollars are allocated.

As far as public involvement, Hjermstad stated that there is no public involvement in the blight study because the factors that have to be considered and the criteria are strictly spelled out in state statute. There is no process for involvement because objective factors are being evaluated. The redevelopment plan is different and we do go out and get involvement in the area.

Bills-Strand inquired whether the businesses will be involved in the redevelopment plan. Hjermstad assured that they would be, and Urban Development has talked to a number of them already.

Hjermstad further explained that Lincoln has a very high standard when it comes to being defensible in court. All of the properties had to be surveyed in this study. Even when we do a random sample, we hire a research firm that does the statistical analysis. Peo added that it is an effort to look at the overall district and reasonable boundaries to accomplish a purpose.

Marvin inquired whether this gives the city any added condemnation authority. Peo stated that blighting does not do that at all. The redevelopment plan allows condemnation proceedings but it must be specifically provided for.

There was no testimony in opposition.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

July 21, 2004

Larson moved a finding of blighted and substandard, seconded by Taylor and carried 8-0: Marvin, Larson, Taylor, Carlson, Krieser, Pearson, Carroll and Bills-Strand voting 'yes'; Sunderman absent. This is a recommendation to the City Council.

MISCELLANEOUS NO. 04003

TEXT AMENDMENTS TO THE

CITY OF LINCOLN DESIGN STANDARDS

REGARDING STANDARD STREET LIGHTING.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 21, 2004

Members present: Marvin, Larson, Carlson, Krieser, Pearson, Taylor, Carroll and Bills-Strand; Sunderman absent.

Staff recommendation: Deferral.

Ex Parte Communications: None.

The Clerk announced that the staff is requesting an additional deferral until August 18, 2004.

Taylor moved to defer four weeks, with continued public hearing and administrative action on August 18, 2004, seconded by Krieser and carried 8-0 Marvin, Larson, Taylor, Carlson, Krieser, Pearson, Carroll and Bills-Strand voting 'yes'; Sunderman absent.

OTHER ACTION BY PLANNING COMMISSION:

July 21, 2004

Members present: Marvin, Larson, Carlson, Krieser, Pearson, Taylor, Carroll and Bills-Strand; Sunderman absent.

Marvin referred to the townhome development which the Planning Commission recommended be denied earlier today, which is along the Highlands Golf Course. Last fall, the city surplused some O-3 property and he has learned that the property has not been sold. When he voted for that, he thought it was property that could be used to bring in a big employer such as we did for Talent Plus. It seems that there are creative things that we could do but he is afraid that if it stays zoned O-3 without any restrictions on the sale, it could go for any kind of use including massive numbers of four-plexes, and we wouldn't get the advantage that we could have had. We already own the land. If we use that as an incentive tool to attract an employer, we have advantages. He talked with the Planning Director, who indicates that rezoning would delay the efforts of the sale and might reduce the value of the land to potential buyers. If the Planning Commission feels strongly about this, a less involved route than rezoning would be for the Planning Commission to recommend that the Mayor or City Council place a use restriction on the property.

Marvin made a motion to encourage the Mayor to put a deed restriction on the property so that its best use is to attract high wage employers to the community and not to use it for residential or other incompatible uses, seconded by Pearson.

The land being referred to abuts the golf course, just south of the use permit that was proposed today. Ray Hill of Planning staff clarified that it is the area south of the driving range of the golf course, adjacent to N.W. 12th and near the intersection of Highlands Blvd. Carroll wondered whether the restriction is to be specific. Marvin stated that it is not specific. He just wants the Mayor to know that it would be the wishes of the Planning Commission that they take into consideration what use is made of that property. Bills-Strand clarified that the motion is to encourage the Mayor to put a deed restriction on the property, restricting it to office use and not residential, utilizing it in such a way to attract employers to our community rather than just sell it to the highest bidder without giving any thought to what is going on the property.

Rick Peo agreed that a deed restriction can limit it to certain uses.

Motion carried 8-0: Marvin, Larson, Taylor, Carlson, Krieser, Pearson, Carroll and Bills-Strand voting 'yes'; Sunderman absent.

There being no further business, the meeting was adjourned at 4:00 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on August 4, 2004.